

**BEFORE THE
COMMISSION ON LANDLORD TENANT AFFAIRS
FOR MONTGOMERY COUNTY, MARYLAND**

In the matter of:

Gabriel Schmidbauer and
Kristen Penman

Complainants

V.

Ardeshir Badr and
Marie Mauel

Respondents

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Case No. 32757

Rental Facility: 718 Chesapeake Avenue, Silver Spring, MD 20910 (License # 58710)

DECISION AND ORDER

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland ("Commission"), pursuant to Sections 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 2nd day of March, 2012, found, determined, and ordered, as follows:

BACKGROUND

On September 1, 2011, Gabriel Schmidbauer and Kristen Penman ("Complainants"), former tenants at 718 Chesapeake Avenue, Silver Spring, MD ("Property"), a licensed rental property in Montgomery County, Maryland, filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs, ("Department") in which they alleged that their former landlords, Ardeshir Badr and Marie Mauel, owners of the Property ("Respondents"): (1) failed to refund any portion of their \$2,550.00 security deposit plus accrued interest within 45 days after the termination of their tenancy, in violation of Maryland Code (1954, 2003 Repl. Vol., 2007 Suppl.), Real Property Article, Section 8-203(e)(1) ("Real Property Article"); and, (2) failed to send them an itemized list of damages, together with a statement of the costs actually incurred to repair those damages, within the 45 days after the termination of their tenancy, in violation of Section 8-203 (g)(1) of the Real Property Article, and therefore, pursuant to Section 8-203(g)(2), the Respondents have forfeited the right to withhold any portion of their security deposit plus accrued interest.

The Complainants assert that they did not damage the Property in excess of ordinary wear and tear during their tenancy, and therefore, the Respondents had no reasonable basis to withhold any portion of their security deposit plus accrued interest.

The Complainants are seeking an Order from the Commission for the Respondents to refund their entire \$2,550.00 security deposit plus interest.

After determining that the complaint was not susceptible to conciliation, the Department duly referred this case to the Commission for its review, and on November 1, 2011, the Commission voted to hold a public hearing on January 11, 2012. Due to conflicts with the Complainants' work schedule the hearing was continued to February 23, 2012. The public hearing in the matter of Gabriel Schmidbauer and Kristen Penman v. Ardeshir Badr and Marie Mauel relative to Case No. 32757 was held on February 23, 2012.

The record reflects that the Complainants and the Respondents were given proper notice of the hearing date and time as well as the continuance of the hearing (Commission Exhibit No. 1-Pages No. 58, 65 and 68). Present and sworn at the hearing and presenting evidence was one of the Complainants, Gabriel Schmidbauer. The Respondents, Ardeshir Badr and Marie Mauel failed to appear at the hearing.

Without objection, the Commission entered into the record the case file compiled by the Department identified as Commission's Exhibit No. 1.

FINDINGS OF FACT

Based on the testimony and evidence of record, the Commission makes the following Findings of Fact:

1. On April 5, 2008, the Respondents and the Complainants signed a one year lease agreement ("Lease") for the rental of the Property, which commenced on April 15, 2008, and expired on April 30, 2009, for a monthly rent of \$1,700.00 (Commission's Exhibit No.1 – Pages 3 through 10).
2. On or about April 5, 2008, the Complainants paid the Respondents a security deposit, in the amount of \$2,550.00; which amount is receipted in the Lease (Commission Exhibit No. 1 – Pages 4 and 13).
3. At the expiration of the lease term, the Complainants renewed the Lease once for the period April 15, 2009, through April 15, 2010; and a second time for the period April 15, 2010, through April 15, 2011 (Commission Exhibit No. 1 – Pages 11 and 12).
4. On April 12, 2011, the Complainants and the Respondents mutually agreed to terminate their lease at the end of the second renewal period – April 15, 2011.
5. The Commission finds that the Complainants vacated the Property on April 15, 2011, having paid rent in full through that date.

6. The Commission finds that on April 12, 2011, the Respondents and Complainant, Kristen Penman, performed a final walkthrough inspection, at the time no damages in excess of ordinary wear and tear were noted.

7. The Commission finds credible Complainant Gabriel Schmidbauer's testimony that they provided the Respondents with a forwarding address and e-mail address at the time of the walkthrough inspection and that as of the date of this hearing they have not received from the Respondents an itemized list of damages assessed against their security deposit.

8. The Commission finds that the Respondents failed to credit the Complainants' security deposit with the correct amount of simple interest which had accrued on their \$2,550.00 security deposit from the commencement of their tenancy, April 5, 2008, until the termination of their tenancy, April 15, 2011, in the amount of \$229.50.

CONCLUSIONS OF LAW

Accordingly, based upon a fair consideration of the testimony and evidence contained in the record, the Commission on Landlord-Tenant Affairs concludes:

1. Pursuant to Section 8-203(g)(1) and (2) of the Real Property Article, "If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under subsection (f)(1) of this section together with a statement of the cost actually incurred"; and, "If the landlord fails to comply with this requirement, he forfeits the right to withhold any part of the security deposit for damages." The Commission concludes that the Respondents failed to send the Complainants within 45 days after the termination of their tenancy, a list of damages claimed against their security deposit. This failure constitutes a violation of Section 8-203 (g) (1) of the Real Property Article, and has created a defective tenancy. Therefore, pursuant to Section 8-203 (g) (2), the Respondents have forfeited their right to withhold any portion of the Complainants' security deposit for damages.

2. The Commission concludes that the Respondents' failure to pay the Complainants interest (\$229.50) which had accrued on their security deposit constitutes a violation of Section 8-203(e)(1) of the Real Property Article, and has created a defective tenancy.

3. The Commission concludes that the Respondents' failure to handle and dispose of the Complainants' security deposit (\$2,550.00) plus accrued interest (\$229.50) in accordance with the requirements of the applicable provisions of Section 8-203, "Security deposits," of the Real Property Article, has caused a defective tenancy.

4. The Commission concludes that the failure by the Respondents to refund any portion of the Complainants' security deposit plus accrued interest was unreasonable and constituted a violation of Section 8-203 (e)(4) of the Real Property Article. To award a penalty, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Respondents' conduct in wrongfully withholding the Complainants' security deposit and whether or not the Respondents acted in bad faith or have a prior history of wrongful withholding of a security deposit. Based on the evidence, the Commission concludes

that the Respondents' conduct does rise to the level of bad faith and egregiousness necessary to award a penalty. Therefore, an additional award of \$500.00 as a penalty is granted.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondents must pay the Complainants **\$3,279.50**, which sum represents the Complainants' security deposit (\$2,550.00), plus accrued interest (\$229.50), and a \$500.00 penalty.

Commissioner Denise Hawkins, Commissioner Beverly Flanagan, and Commissioner Galia Steinbach, Panel Chairperson, unanimously concurred in the foregoing decision.

To comply with this Order, Respondents Ardeshir Badr and Marie Mael, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order, a check, made payable to Gabriel Schmidbauer and Kristen Penman, in the amount of \$3,279.50.

The Respondents, Ardeshir Badr and Marie Mael, are hereby notified that Section 29-48 of the County Code declares that failure to comply with this Decision and Order is punishable by a \$500.00 civil fine Class A violation as set forth in Section 1-19 of the County Code. This civil fine may, at the discretion of the Commission, be imposed on a daily basis until there is compliance with this Decision and Order.

In addition to the issuance of a Class A civil citation and \$500.00 civil fine, should the Commission determine that the Respondents have not, within thirty (30) calendar days of the date of this Decision and Order, made a bona fide effort to comply with the terms of this Decision and Order, it may also refer the matter to the Office of the County Attorney for additional legal enforcement.

Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland, within thirty (30) days from the date of this Decision and Order, pursuant to the Maryland Rules governing administrative appeals. Pursuant to Section 29-49 of the County Code, should the Respondents choose to appeal the Commission's Order, they must post a bond with the Circuit Court in the amount of the award (\$3,279.50) if a stay of enforcement of this Decision and Order is sought.

Galia Steinbach, Panel Chairperson
Commission on Landlord-Tenant Affairs